

### **UNITED STATES** SECURITIES AND EXCHANGE COMMISSION **WASHINGTON, D.C. 20549-3010**

09035362

Amy L. Goodman

Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306

Re:

Time Warner Inc.

Incoming letter dated December 30, 2008

Dear Ms. Goodman:

This is in response to your letters dated December 29, 2008 and December 30, 2008 concerning the shareholder proposal submitted to Time Warner by the International Brotherhood of Electrical Workers' Pension Benefit Fund. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

Received SEC

FEB 2 6 2009

Washington, DC 20549

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples Senior Special Counsel

### **Enclosures**

cc:

Lindell K. Lee

Trustee

International Brotherhood of

Electrical Workers' Pension Benefit Fund

900 Seventh Street, NW Washington, DC 20001

February 26, 2009

Act: Section: 149-8 Rule: **Public** Availability:

# Response of the Office of Chief Counsel Division of Corporation Finance

Re: Time Warner Inc.

Incoming letter dated December 30, 2008

The proposal requests that the board take the necessary steps to provide for cumulative voting in the election of directors.

There appears to be some basis for your view that Time Warner may exclude the proposal under rule 14a-8(i)(11) as substantially duplicative of a previously submitted proposal that will be included in Time Warner's 2009 proxy materials. Accordingly, we will not recommend enforcement action to the Commission if Time Warner omits the proposal from its proxy materials in reliance on rule 14a-8(i)(11).

Sincerely,

Damon Colbert Attorney-Adviser

### Maples, Heather

From:

McPhee, Gillian [GMcPhee@gibsondunn.com]

Sent:

Tuesday, December 30, 2008 9:39 AM

To:

shareholderproposals

Subject:

Time Warner (IBEW) -- CORRECT VERSION

Importance: High

Attachments: Time Warner - No-Action Letter- Stockholder Proposal of IBEW.pdf

At 6:41 p.m. yesterday (December 29), we submitted on behalf of our client, Time Warner Inc., a no-action request with respect to a stockholder proposal and statements in support thereof submitted by the International Brotherhood of Electrical Workers Pension Benefit Fund.

### Please disregard that e-mail.

Attached is the correct version of the no-action request, which should replace the version sent yesterday.

Thank you, Gillian McPhee

Gillian McPhee Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue N.W. Washington, D.C. 20036-5306

Phone: (202) 955-8230 Fax: (202) 530-9572

Email: gmcphee@gibsondunn.com

<<Time Warner - No-Action Letter- Stockholder Proposal of IBEW.pdf>>

From: Reilly, Susan M.

Sent: Monday, December 29, 2008 6:41 PM To: shareholderproposals@sec.gov Subject: Time Warner (IBEW)

Attached on behalf of our client, Time Warner Inc., please find our no-action request with respect to a stockholder proposal and statements in support thereof submitted by the International Brotherhood of Electrical Workers Pension Benefit Fund.

Susan M. Reilly Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036 T: (202) 887-3675 F: (202) 530-4214 sreilly@gibsondunn.com

<< File: Time Warner - No-Action Letter - Stockholder Proposal of the IBEW.pdf >>

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

# DIVISION OF CORPORATION FINANCE INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

### LÄWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306
(202) 955-8500
www.gibsondunn.com
agoodman@gibsondum.com

December 30, 2008

Direct Dial (202) 955-8653 Fax No. (202) 530-9677

Re:

Client No. C 92415-00001

### VIA EMAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Time Warner Inc.; Stockholder Proposal of the International Brotherhood of Electrical Workers Pension Benefit Fund Exchange Act of 1934—Rule 14a-8

### Dear Ladies and Gentlemen:

This letter is to inform you that our client, Time Warner Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2009 Annual Meeting of Stockholders (collectively, the "2009 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof submitted by the International Brotherhood of Electrical Workers Pension Benefit Fund (the "Proponent").

### Pursuant to Rule 14a-8(i), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2009 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the

LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO LONDON PARIS MUNICH BRUSSELS DUBAI SINGAPORE ORANGE COUNTY CENTURY CITY DALLAS DENVER.

Office of Chief Counsel
Division of Corporation Finance
December 30, 2008
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Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

# THE PROPOSAL AND THE PRIOR PROPOSAL

On November 25, 2008, the Proponent submitted the Proposal for inclusion in the 2009 Proxy Materials. The Proposal states:

RESOLVED: That the stockholders of Time Warner Inc. ("the Company"), assembled in Annual Meeting in person and by proxy, hereby request the Board of Directors to take the necessary steps to provide for cumulative voting in the election of directors, which means each stockholder shall be entitled to as many votes as shall equal the number of shares he or she owns multiplied by the number of directors to be elected, and he or she may cast all of such votes for a single candidate, or any two or more of them as he or she may see fit.

A copy of the Proposal, as well as related correspondence, is attached to this letter as Exhibit A.

Prior to that date, on November 4, 2008, the Company received a stockholder proposal (the "Prior Proposal") submitted by John Chevedden purportedly under the name of Kenneth Steiner as his nominal proponent. The Prior Proposal states:

RESOLVED: Cumulative Voting. Shareholders recommend that our Board take the steps necessary to adopt cumulative voting. Cumulative voting means that each shareholder may cast as many votes as equal to the number of shares held, multiplied by the number of directors to be elected. A shareholder may cast all such cumulated votes for a single candidate or split votes between multiple candidates. Under cumulative voting shareholders can withhold votes from certain poor-performing nominees in order to cast multiple votes for others.

A copy of the Prior Proposal, as well as related correspondence, is attached to this letter as Exhibit B.

### BASIS FOR EXCLUSION

For the reasons addressed in a separate no-action request regarding the Prior Proposal, which is being submitted concurrently herewith, the Company believes that the Prior Proposal is excludable. Alternatively, should the Staff not concur with the exclusion of the Prior Proposal for the reasons addressed in that request, then the Company intends to include the Prior Proposal in its 2009 Proxy Materials. Accordingly, we hereby respectfully request that the Staff concur in our view that, if the Company includes the Prior Proposal in its 2009 Proxy Materials, the

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Proposal may be excluded from the 2009 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Proposal is substantially duplicative of the Prior Proposal.

### **ANALYSIS**

The Proposal May Be Excluded under Rule 14a-8(i)(11) as Substantially Duplicative of a Previously Submitted Proposal.

Rule 14a-8(i)(11) provides that a stockholder proposal may be excluded if it "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." The Commission has stated that "[t]he purpose of [Rule 14a-8(i)(11)] is to eliminate the possib[ility] of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976).

The Proposal is substantially duplicative of the previously submitted Prior Proposal. In fact, as reflected above, the resolutions in both proposals are virtually identical. When a company receives two substantially duplicative proposals, the Staff has indicated that the company must include in its proxy materials the proposal it received first, unless that proposal may otherwise be excluded. See Atlantic Richfield Co. (avail. Jan. 11, 1982); see also Great Lakes Chemical Corp. (avail. Mar. 2, 1998); Pacific Gas & Electric Co. (avail. Jan. 6, 1994). The Company received the Prior Proposal on November 4, 2008, 21 days before it received the Proposal on November 25, 2008. Accordingly, unless the Prior Proposal is otherwise excludable, the Company intends to include the previously submitted Prior Proposal in its 2009 Proxy Materials and to exclude the Proposal as substantially duplicative of the Prior Proposal.

Pursuant to Staff precedent, the standard applied in determining whether proposals are substantially duplicative is whether the proposals present the same "principal thrust" or "principal focus." See Pacific Gas & Electric Co. (avail. Feb. 1, 1993) (refusing to allow exclusion of a subsequently submitted proposal under Rule 14a-8(i)(11) because the "principal thrust" of the second proposal differed from the "principal focus" of the previously submitted proposal). The Staff consistently has taken the position that proposals need not be identical in order for a company to exclude a subsequently submitted proposal from its proxy statement in reliance on Rule 14a-8(i)(11). See, e.g., International Paper Co. (avail. Feb. 19, 2008) (allowing exclusion of a proposal asking that the board remove supermajority vote requirements from the company's charter as substantially duplicative of a proposal asking that the board adopt simple majority vote requirements in the company's charter and bylaws); General Motors Corp. (avail. Apr. 5, 2007) (allowing exclusion of a proposal requesting an annual statement of each contribution made with respect to a political campaign, political party, or attempt to influence legislation as substantially duplicative of proposal requesting a report outlining the company's political contribution policy along with a statement of non-deductible political contributions made during the year); Qwest Communications International, Inc. (avail. Mar. 8, 2006)

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(allowing exclusion of a proposal to amend the company's governance documents to provide that directors be elected by a majority vote as substantially duplicative of a proposal requesting that the board amend the bylaws to provide that directors be elected by majority vote in uncontested elections and by plurality vote in contested elections).

In the instant case, the Proposal and the Prior Proposal have the same principal thrust and focus. The resolutions in the proposals are virtually identical and ask the Board of Directors to take the steps necessary to adopt cumulative voting in director elections. Further, each proposal defines the term "cumulative voting" in the same manner; that is, to mean that each stockholder be entitled to cast as many votes as equal the number of shares he or she holds multiplied by the number of directors to be elected, and that the stockholder can cast these cumulated votes for one or more directors in any manner he or she sees fit. In addition, the supporting statements of both proposals provide the same basic rationale in support of cumulative voting. In this regard, both supporting statements state that cumulative voting will increase director independence and will help the Board represent all stockholders, including minority stockholders and their interests. The only substantive difference between the two proposals is that the Prior Proposal's supporting statement contains additional statistics and rationales to advocate for cumulative voting.

A primary rationale behind the "principal thrust" / "principal focus" concept is that the inclusion in a single proxy statement of multiple proposals addressing the same issue in different terms may confuse stockholders and place a company and its board of directors in a position where they are unable to determine the stockholders' will. If the Company were to include both the Proposal and the Prior Proposal in its 2009 Proxy Materials, this would create confusion for stockholders because they would be asked to vote on the same subject matter – whether to adopt cumulative voting in director elections – in two different votes on two different proposals. Further, if one of the proposals fails and the other passes, the Board would be unable to determine the stockholders' will, and it would be difficult for the Board to decide what course of action it should take with respect to cumulative voting.

If the Staff does not concur that the Prior Proposal is excludable for the reasons addressed in the separate no-action request submitted concurrently herewith, then the Company intends to include the Prior Proposal in its 2009 Proxy Materials. In that event, the Company believes that the Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the previously submitted Prior Proposal.

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2009 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

Office of Chief Counsel Division of Corporation Finance December 30, 2008 Page 5

If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8653 or Julie Y. Kim, the Company's Counsel, at (212) 484-8142.

Sincercly,

Amy L. Goodman

ALG/jas Enclosures

cc: Julie Y. Kim, Time Warner Inc.

Lindell K. Lee, International Brotherhood of Electrical Workers Pension Benefit Fund

100574295\_5.DOC

**EXHIBIT A** 

IBEW Pension Benefit Fund



To: Mr. Paul F. Washington

Vice President and Corporate Secretary

Time Warner, Inc.

From

Lindell K. Lee

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c/o

Jim Voye, Director Corporate Affairs (202) 728-6103

<u>F</u>	212/484-7174	Pages:	3 including cov	er page
Re: )	BEW / PBF Shareho	lder Proposal Date:	November 25, 20	<b></b> -
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Please see shareholder proposal attached.

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# TRUST FOR THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, PENSION BENEFIT FUND

900 Seventh Street, NW • Washington, DC 20001 • (202) 833-7000

Edwin D. Hill Trustce

Lindell K. Lee Trustee November 25, 2008

### VIA PACSIMILE (212-484-7174) AND CERTIFIED MAIL

Mr. Paul F. Washington Vice President and Corporate Secretary Time Warner, Inc. One Time Warner Center New York, NY 10019

Dear Mr. Washington:

On behalf of the Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund (IBEW PBF) ("Fund"), I hereby submit the enclosed shareholder proposal for inclusion in Time Warner, line ("Company") proxy statement to be circulated to Corporation Shareholders in conjunction with the next Annual Meeting of Shareholders in 2009.

The proposal relates to "Cumulative Voting" and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's Proxy Guidelines.

The Fund is a beneficial holder of Time Warner, Inc. common stock valued at more than \$2,000 and has held the requisite number of shares, required under Rule 14a-8(a)(1) for more than a year. The Fund intends to hold the shares through the date of the company's 2009 Annual Meeting of Shareholders: The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter.

Should you decide to adopt the provisions of the proposal as corporate policy, we will ask that the proposal be withdrawn from consideration at the annual meeting.

Either the undersigned or a designated representative will present the proposal for consideration at the Annual Meeting of the Shareholders.

Sincerely yours,

Lindell K. Lee

Trustee

LKL:daw Enclosure

RESOLVED: That the stockholders of Time Warner Inc. ("the Company"), assembled in Annual Meeting in person and by proxy, hereby request the Board of Directors to take the necessary steps to provide for cumulative voting in the election of directors, which means each stockholder shall be entitled to as many votes as shall equal the number of shares he or she owns multiplied by the number of directors to be elected, and he or she may cast all of such votes for a single candidate, or any two or more of them, as he or she may see fit."

## SUPPORTING STATEMENT

Cumulative voting means that each shareholder may east as many votes as equal the number of shares held, multiplied by the number of directors to be elected. Each shareholder may east all such cumulated votes for a single candidate or split votes between one or more candidates, as each shareholder sees fit.

We believe that cumulative voting increases the possibility of electing at least one director with a viewpoint independent of management. In our opinion, this will help achieve the objective of the board représenting all shareholders.

We urge our fellow shareholders to vote yes for cumulative voting and the opportunity to enhance our Board with a more independent perspective.

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November 25, 2008

Via Facsimile (212-484-7174) & Certified Mail

Mr. Paul E. Washington Vice President and Corporate Secretary Time Warner, Inc. One Time Warner Center New York, NY 10019

Res. Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund (IBEW PBF)

Dear Mr. Washington:

As custodian of the Board of Trustees of the International Brotherhood of Electrical Workers Renaion Benefit Fund (IBEW RBF), we are writing to report that as of the close of business Nevember 25, 2008 the Fund held 138,431 shares of Time Warner Inc. stock in our account at The Bank of New York Mellon and registered in its nominal name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since November 25, 2007.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 617-382-4636.

Sincerely,

Kristopher Verity

Officer

The Bank of New York Mellon

OFFICE OF THE COMPORATE SECRETAIN

# **TimeWarner**

# VIA OVERNIGHT MAIL CONFIRMATION OF RECEIPT REQUESTED

December 2, 2008

Mr. Lindell K. Lee Trustee Trust for the International Brotherhood of Electrical Workers' Pension Benefit Fund 900 Seventh Street, NW Washington, DC 20001

Re: Proposal Submitted to Time Warner Inc.

Dear Mr. Lee:

Your letter addressed to the Corporate Secretary dated November 25, 2008, received by Time Warner Inc. ("TWI") on November 25, 2008, has been forwarded to me. A copy of your letter is attached. As you are aware, Rule 14a-8 promulgated under the Securities Exchange Act of 1934 governs the requirements for stockholders submitting proposals to a company for inclusion in the company's proxy material for its stockholders' meetings and the situations in which a company is not required to include any such proposal in such proxy material.

Pursuant to Rule 14a-8(b), to be eligible to have a proposal included in the proxy material of TWI, the proponent is required to submit sufficient proof of its continuous ownership of at least \$2,000 in market value, or 1%, of securities entitled to be voted on the proposal at the meeting for at least one year as of the date the proposal was submitted. To date, we have not received documentary proof of this share ownership. We have reviewed our records of registered stockholders and could not confirm the proponent's ownership.

To remedy this defect, the proponent must submit sufficient proof of its ownership of the requisite number of TWI shares. Rule 14a-8(b) provides that sufficient proof may be in the form of (1) a written statement from the "record" holder of the proponent's TWI common stock (usually a broker or bank) verifying that, as of November 25, 2008 (the date the proposal was submitted), the proponent continuously held the requisite number of shares of TWI common stock for at least one year, or (2) if the proponent has filed with the Securities and Exchange Commission a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the proponent's ownership of the requisite number of TWI shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any

Mr. Lindell K. Lee December 2, 2008 Page 2

subsequent amendments reporting a change in the ownership level and a written statement that the proponent continuously held the requisite number of TWI shares for the one-year period.

Pursuant to Rule 14a-8(f)(1), this requested documentation must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this request.

The proxy rules also provide certain substantive criteria pursuant to which a company is permitted to exclude from its proxy materials a stockholder's proposal. This letter addresses only the procedural requirements for submitting a proposal and does not address or waive any of our substantive concerns.

Please address any response to this request and any future correspondence relating to the proposal to my attention. Please note that any correspondence sent to me via fax should be sent to 212-484-7278.

For your reference, I enclose a copy of Rule 14a-8.

Sincerely,

Julie Kim Counsel

Attachment



# TRUST FOR THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; PENSION BENEFIT FUND

900 Seventh Street, NW. Washington, DC 20001 . (202) 833-7000

Edwin D. Hill Trustce

Lindell K. Lee Trustee November 25, 2008

### VIA FACSIMILE (212-484-7174) AND CERTIFIED MAIL

Mr. Paul F. Washington
Vice President and Corporate Secretary
Lime Warner, Inc.
One Time Warner Center
New York, NY 10019

Dear Mr. Washington:

On behalf of the Board of Trustees of the International Brotherhood of Electrical Workers Pension.

Benefit Fund (IBEW PBF) ("Fund"), I hereby submit the enclosed shareholder proposal for inclusion in Time Warner, Inc. ("Company") proxy statement to be circulated to Corporation Shareholders in conjunction with the next Annual Meeting of Shareholders in 2009.

The proposal relates to "Cumulative Voting" and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's Proxy Guidelines.

The Fund is a beneficial holder of Time Warner, Inc. common stock valued at more than \$2,000 and has held the requisite number of shares, required under Rule 14a-8(a)(1) for more than a year. The Fund intends to hold the shares through the date of the company's 2009 Annual Meeting of Shareholders: The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter.

Should you decide to adopt the provisions of the proposal as corporate policy; we will ask that the proposal be withdrawn from consideration at the annual meeting.

Either the undersigned or a designated representative will present the proposal for consideration at the Annual Meeting of the Shareholders.

**\*\*** 

Sincerely yours,

Lindell K. Let

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RESOLVED: That the stockholders of Time Warner Inc. ("the Company"), assembled in Annual Meeting in person and by proxy, hereby request the Board of Directors to take the necessary stops to provide for cumulative voting in the election of directors, which means each stockholder shall be entitled to as many votes as shall equal the number of shares be or she owns multiplied by the number of directors to be elected; and he or she may cast all of such votes for a single candidate, or any two or more of e fil"
SUPPORTING STATEMENT them as he or she may see fit."

SUPPORTING STATEMENT

Cumulative voting means that each shareholder may east as many votes as equal the number of shares held, multiplied by the number of directors to be elected. Each shareholder may cast all such cumulated votes for a single candidate or split votes between one or more candidates, as each shareholder sees fit.

We believe that cumulative voting increases the possibility of electing at least one director, with a viewpoint independent of management. In our opinion, this will help achieve the objective of the board representing all shareholders.

We urge our fellow shareholders to vote yes for cumulative voting and the opportunity to enhance our Board with a more independent perspective. opportunity to enhance our Board with a more independent perspective.

## Rule 14a-8 — Proposals of Security Holders

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and- answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

- a. Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- b. Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
  - In order to be eligible to submit a proposal, you must have continuously held at least \$2,000
    In market value, or 1%, of the company's securities entitled to be voted on the proposal at the
    meeting for at least one year by the date you submit the proposal. You must continue to hold
    those securities through the date of the meeting.
  - 2. If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - i. The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
    - The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:
      - A. A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
      - Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
      - C. Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

- c. Question 3: How many proposals may I submit: Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.
- Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
- e. Question 5: What is the deadline for submitting a proposal?
  - 1. If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10- Q or 10-QSB, or in shareholder proports of investment companies under Rule 30d-1 of the Investment Company Act of 1940, [Editor's note: This section was redesignated as Rule 30e-1. See 66 FR 3734, 3759, Jan. 16, 2001.] In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
  - 2. The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not held an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and sends its proxy materials.
  - If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and sends its proxy materials.
- f. Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?
  - 1. The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).
  - If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- g. Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- h. Question 8: Must I appear personally at the shareholders' meeting to present the proposal?
  - Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

- If the company holds its shareholder meeting in whole or in partial electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
- If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- i. Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?
  - Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

### Note to paragraph (i)(1)

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

Violation of law; if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

#### Note to paragraph (i)(2)

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law could result in a violation of any state or federal law.

- Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- 4. Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
- 5. Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earning sand gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business:
- Absence of power/authority: If the company would lack the power or authority to implement the proposal;

- Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;
- Relates to election; If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body; or a procedure for such nomination or election;
- Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

#### Note to paragraph (i)(9)

Note to paragraph (I)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

- Substantially implemented: If the company has already substantially implemented the proposal;
- Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
- 12. Resubmissions: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:
  - i. Less than 3% of the vote if proposed once within the preceding 5 calendar years;
  - ii. Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
  - Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and
- Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.
- j. Question 10: What procedures must the company follow if it intends to exclude my proposal?
  - 1. If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
  - 2. The company must file six paper copies of the following:
    - i. The proposal;
    - ii. An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

- A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- k. Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

- 1. Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?
  - The company's proxy statement must include your name and address, as well as the number
    of the company's voting securities that you hold. However, instead of providing that
    information, the company may instead include a statement that it will provide the information
    to shareholders promptly upon receiving an oral or written request.
  - 2. The company is not responsible for the contents of your proposal or supporting statement.
- m. Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?
  - The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
  - 2. However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasens for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
  - 3. We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
    - If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
    - In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.



November 25, 2008

Via Facsimile (212-484-7174) & Certified Mail

Mr. Paul F. Washington Vice President and Corporate Secretary Time Warner, Inc. One Time Warner Center New York, NY 10019

Re: Board of Trustees of the International Brotherhood of Electrical Workers Penelon Benefit Fund (IBEW PBF)

Dear Mr. Washington:

As custodian of the Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund (IBEW PBF), we are writing to report that as of the close of business November 25, 2008 the Fund held 138,431 shares of Time Warner Inc. stock in our account at The Bank of New York Mellon and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since November 25, 2007.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 617-382-4636.

Sincerely.

Kristopher Verity

Officer

The Bank of New York Mellon

EXHIBIT B

### Kenneth Steiner

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Mr. Richard D. Parsons Time Warner Inc. (TWX) 1 Time Warner Center New York NY 10019 Phone: 212 484-8000

Rule 14a-8 Proposal

Dear Mr. Parsons,

This Rule 144-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is for the next annual shareholder meeting. Rule 144-8 requirements are intended to be met including the continuous ownership of the required stock value until after the date of the respective absreholder meeting and the presentation of this proposal at the annual meeting. This submitted format, with the shareholder supplied emphasis, is intended to be used for definitive proxy publication. This is the proxy for John Chevedden and/or his designee to act on my behalf regarding this Rule 144-8 proposal for the forthcoming shareholder meeting, before, during and effer the forthcoming shareholder meeting. Please direct all future communications to John Chevedden (RII:OMB Memorandur) #107-16 \*\*\*

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

to facilitate prompt communications and in order that it will be verifiable that communications have been sent.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by small.

Kenneth Steiner

co: Paul F. Washington < Paul Washington@TimeWarner.com>

Paul F. Washington Corporate Secretary PH: 212-484-6753

FX: 212-484-7174
Janet Silverman@timewarner.com>

Assistant General Course)

T: 212-484-7961 P: 219-202-4124 F: 212-484-7278

### [TWK: Rule 14s-8 Proposal, November 4, 2008] 3 - Cumulative Voting

RESOLVED: Cumulative Voting. Shareholders recommend that our Beard take the steps necessary to adopt cumulative voting. Cumulative voting means that each shareholder may cast as many votes as equal to number of shares held, multiplied by the number of directors to be elected. A sharcholder may cast all such cumulated votes for a single candidate or split votes between multiple candidates. Under cumulative voting shareholders can withhold votes from certain poor-performing nominees in order to cast multiple votes for others.

#### Statement of Kenneth Steiner

Cumulative voting won 54%-support at Aetha and greater than 51%-support at Alaska Air in 2005 and in 2008. It also received greater than 53%-support at General Motors (GM) in 2006 and in 2008. The Council of Institutional Investors www.cii.org recommended adoption of this proposal topic. CalPERS also recommend a yes-vote for proposals on this topic. Nonetheless our directors made sure that we could not vote on this established topic of cumulative voting at our 2008 annual meeting.

Cumulative voting allows a significant group of sharcholders to elect a director of its choice safeguarding minority shareholder interests and bringing independent perspectives to Board decisions. Cumulative voting also encourages management to maximize shateholder value by making it easier for a would-be acquirer to gain board representation. It is not necessarily intraded that a would-be acquirer materialize, however that very possibility represents a powerful incentive for improved management of our company.

The merits of this Cumulative Voting proposal should also be considered in the context of the need for improvements in our company's corporate governance and in individual director performance. For instance in 2008 the following governance and performance issues were identified:

 The Corporate Library (TCL) www.thecorporatelibrary.com/ an independent investment research firm rated our company:

Dn in Overall Board Effectiveness.

"Very High Concern" in executive pay with \$19 million for Jeffrey Bewkes and \$18 million for Richard Parsons.

"High Governance Risk Assessment"

 We had no shareholder right to: Cumulative voting,

Act by written consent.

An independent Chairman.

- We had two inside directors and one inside-related director Independence concerns.
- Two directors served on 4 boards each Over-commitment concern: Michael Miles

Stephen Bollenbach

 Time Warner was featured in the "Pay For Failure" report by Paul Hodgson of The Corporate Library. Hodgson noted that our CEO Richard Parsons received \$25 million over two years while shareholders experienced a 5-year return of minus-31%.

The above concerns shows there is need for improvement. Please encourage our board to respond positively to this proposal:

> Cumulative Voting Yes on 3

Notes:

Kenneth Steiner.

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

sponsored this proposal.

The above format is requested for publication without re-editing, re-formatting or elimination of text, including beginning and concluding text, unless prior agreement is reached. It is respectfully requested that this proposal be proofread before it is published in the definitive proxy to ensure that the integrity of the submitted format is replicated in the proxy materials. Picase advise if there is any typographical question.

Please note that the title of the proposal is part of the argument in favor of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

The company is requested to assign a proposal number (represented by "3" above) based on the chronological order in which proposals are submitted. The requested designation of "3" or higher number allows for ratification of suditors to be item 2.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including:

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14e-8(i)(3) in the following circumstances:

the company objects to factual assertions because they are not supported;

the company objects to factual assertions that, while not materially false or misleading, may
be disputed or countered;

 the company objects to factual assertions because those essertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or

\* the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

See also: Sun Microsystems, Inc. (July 21, 2005).

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by small.

# **TimeWarner**

VIA OVERNIGHT MAIL
CONFIRMATION OF RECEIPT REQUESTED

VIA EMAIL

November 10, 2008

Mr. John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Re: Proposal Submitted to Time Warner Inc.

Dear Mr. Chevedden:

A letter from Mr. Kenneth Steiner addressed to Richard D. Parsons signed October 9, 2008, received by Time Warner Inc. ("TWI") on November 4, 2008, in which you were designated to act on behalf of Mr. Steiner in connection with a Rule 14a-8 proposal he has submitted to TWI, has been forwarded to me. A copy of Mr. Steiner's letter is attached. As you are aware, Rule 14a-8 promulgated under the Securities Exchange Act of 1934 governs the requirements for stockholders submitting proposals to a company for inclusion in the company's proxy material for its stockholders' meetings and the situations in which a company is not required to include any such proposal in such proxy material.

Pursuant to Rule 14a-8(b), to be eligible to have a proposal included in the proxy material of TWI, the proponent is required to own, at the time of submitting the proposal, at least \$2,000 worth of securities entitled to be voted on the proposal at the meeting and to have held such securities continuously for at least one year. To date, we have not received documentary proof of this share ownership. We have reviewed our records of registered stockholders and could not confirm the proponent's ownership. Accordingly, as permitted by Rule 14a-8, TWI requests a written statement from the "record" holder of the TWI common stock (usually a broker or bank) verifying that, as of November 4, 2008, the proponent continuously held the requisite number of shares of TWI common stock for at least one year and providing the number of shares owned.

Pursuant to Rule 14a-8(f)(1), this requested documentation must be provided to TWI within 14 days of your receipt of this request.

Mr. John Chevedden November 10, 2008 Page 2

The proxy rules also provide certain substantive criteria pursuant to which a company is permitted to exclude from its proxy materials a stockholder's proposal. This letter addresses only the procedural requirements for submitting your proposal and does not address or waive any of our substantive concerns.

Please address any future correspondence relating to the proposal to my attention. Please note that any correspondence sent to me via fax should be sent to 212-484-7278.

Sincerely

Julie Kim Counsel

Attachment

cc: Kenneth Steiner

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

### Kenneth Steiner

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Mr. Richard D. Parsons Time Warner Inc. (TWX) 1 Time Weener Center New York NY 10019 Phone: 212 484-8000

### Rulo 14a-8 Próposal

Dear Mr. Parsons.

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is for the next annual shareholder meeting. Rule 14s-8 requirements are intended to be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and the presentation of this proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is the proxy for John Chevedden and/or his designes to act on my behalf regarding this Rule 14s-8 proposal for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all feiture communications to John Cheveddes (PH:OMB Memorandur) #107-16 \*\*\*

\*\* FISMA & OMB Memorandum M-07-16 \*\*\* to facilitate prompt communications and in order that it will be verifiable that communications have been sent.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email.

Konneth Steiner

co: Paul F. Washington < Paul Washington@TimeWarner.com>

Paul P. Washington Corporate Secretary PH: 212-484-6753

FX: 212-484-7174

Janet Silverman < Janet Silverman@timewamer.com>

Assistant General Coursel

T: 212-484-7961 F: 212-202-4124

F: 212-484-7278

### [TWX: Rule 14a-8 Proposal, November 4, 2008] 3 - Cumulative Voting

RRSOLVED: Cumulative Voting. Shareholders recommend that our Beard take the steps necessary to adopt cumulative voting. Cumulative voting means that each shareholder may cast as many votes as equal to number of shares held, multiplied by the number of directors to be elected. A shareholder may cast all such cumulated votes for a single candidate or split votes between multiple candidates. Under cumulative voting shareholders can withhold votes from certain poor-performing nominees in order to cast multiple votes for others.

Statement of Kenneth Stehaer

Cumulative voting won 54%-support at Aetha and greater than 51%-support at Alaska Air in 2005 and in 2008. It also received greater than 53%-support at General Motors (GM) in 2006 and in 2008. The Council of Institutional Investors www.cij.org recommended adoption of this proposal topic. CalPERS also recommend a yes-vote for proposals on this topic. Nonetheless our directors made sure that we could not vote on this established topic of cumulative voting at our 2008 annual meeting.

Cumulative voting allows a significant group of shareholders to elect a director of its choice—safeguarding minority shareholder interests and hringing independent perspectives to Board decisions. Cumulative voting also encourages management to maximize shareholder value by making it easier for a would-be acquirer to gain board representation. It is not necessarily intended that a would-be acquirer materialize, however that very possibility represents a powerful intendive for improved management of our company.

The merits of this Cumulative Voting proposal should also be considered in the context of the need for improvements in our company's corporate governance and in individual director performance. For instance in 2008 the following governance and performance issues were identified:

 The Corporate Library (TCL) www.thecorporatelibrary.com/ an independent investment research firm rated our company;

"D" in Overall Board Effectiveness.

"Very High Concern" in executive pay with \$19 million for Jeffrey Bewkes and \$18 million for Richard Parsons.

"High Governance Risk Assessment."

We had no shareholder right to:

Cumulative voting.

Act by written consent.

An Independent Chairman.

- We had two inside directors and one inside-related director Independence concerns.
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Stephen Bollenbach

 Time Warner was featured in the "Pay For Failure" report by Paul Hodgson of The Corporate Library. Hodgson noted that our CEO Richard Parsons received \$25 million over two years while shareholders experienced a 5-year return of minus-31%.

The above concerns shows there is need for improvement. Please encourage our board to respond positively to this proposal:

Cumulative Voting Yes on 3 Notes:

Kenneth Steiner. \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\* . sponsore

sponsored this proposal.

The above format is requested for publication without re-editing, re-formatting or elimination of text, including beginning and concluding text, unless prior agreement is reached. It is respectfully requested that this proposal be proofread before it is published in the definitive proxy to ensure that the integrity of the submitted format is replicated in the proxy materials. Please advise if there is any typographical question.

Please note that the title of the proposal is part of the argument in favor of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

The company is requested to assign a proposal number (represented by "3" above) based on the chromological order in which proposals are submitted. The requested designation of "3" or higher number allows for ratification of suditors to be item 2.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including:

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14e-8(i)(3) in the following circumstances:

. the company objects to factual assertions because they are not supported;

the company objects to factual assertions that, while not materially false or misleading, may
be disputed or countered;

 the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers;

" the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

See also: Sun Microsystems, Inc. (July 21, 2005).

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promotive by small.

# Rule 14a-8 - Proposals of Security Holders

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

- a. Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- b. Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
  - In order to be eligible to submit a proposal, you must have continuously held at least \$2,000
    in market value, or 1%, of the company's securities entitled to be voted on the proposal at the
    meeting for at least one year by the date you submit the proposal. You must continue to hold
    those securities through the date of the meeting.
  - 2. If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - i. The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
    - ii. The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company;
      - A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
      - B. Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
      - C. Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

- Question 3; How many proposals may I submit: Each shareholder may submit no more than one
  proposal to a company for a particular shareholders' meeting.
- Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
- e. Question 5: What is the deadline for submitting a proposal?
  - 1. If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10- Q or 10-QSB, or in shareholder reports of investment companies under Rule 30d-1 of the investment Company Act of 1940. [Editor's note: This section was redesignated as Rule 30e-1. See 66 FR 3734, 3759, Jan. 16, 2001.] in order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
  - 2. The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and sends its proxy materials.
  - If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled armual meeting, the deadline is a reasonable time before the company begins to print and sends its proxy materials.
- f. Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?
  - 1. The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fall to submit a proposal by the company's property defermined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).
  - If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- g. Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- h. Question 8: Must I appear personally at the shareholders' meeting to present the proposal?
  - Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

- If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
- If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- I. Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

1	Improper under state	law: If the proposal	is not a proper subj	ject for action I	y shareholders
	under the laws of the	jurisdiction of the c	ompany's organizati	ion;	

#### Note to paragraph (i)(1)

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

### Note to paragraph (i)(2)

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law could result in a violation of any state or federal law.

- Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- 4. Personal grievance; special interest: if the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large:
- Relevance: If the proposal relates to operations which account for less than 5 percent of the
  company's total assets at the end of its most recent fiscal year, and for less than 5 percent of
  its net earning sand gross sales for its most recent fiscal year, and is not otherwise
  significantly related to the company's business;
- Absence of power/authority: If the company would lack the power or authority to implement the proposal;

- Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;
- Relates to election: If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body; or a procedure for such nomination or election:
- Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

### Note to paragraph (i)(9)

Note to paragraph (I)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

- Substantially implemented: If the company has already substantially implemented the proposal;
- Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting:
- 12. Resubmissions: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:
  - Less than 3% of the vote if proposed once within the preceding 5 calendar years;
  - ii. Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
  - iii. Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and
- Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.
- j. Question 10: What procedures must the company follow if it intends to exclude my proposal?
  - If the company intends to exclude a proposal from its proxy materials, it must file its reasons
    with the Commission no later than 80 calendar days before it files its definitive proxy
    statement and form of proxy with the Commission. The company must simultaneously provide
    you with a copy of its submission. The Commission staff may permit the company to make its
    submission later than 80 days before the company files its definitive proxy statement and
    form of proxy, if the company demonstrates good cause for missing the deadline.
  - 2. The company must file six paper copies of the following:
    - i. The proposal;
    - ii. An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

- A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- k. Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response,

- I. Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?
  - The company's proxy statement must include your name and address, as well as the number
    of the company's voting securities that you hold. However, instead of providing that
    information, the company may instead include a statement that it will provide the information
    to shareholders promptly upon receiving an oral or written request.
  - 2. The company is not responsible for the contents of your proposal or supporting statement.
- m. Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?
  - The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
  - 2. However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti- fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
  - 3. We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
    - If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
    - In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

From: \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Sent:

Monday, November 10, 2008 5:13 PM

To:

Kim, Julie

Subject: TWX

Dear Ms. Kim, The letters were received. Sincerely,

John Chevedden

From:

oimstedISMA & OMB Memorandum M-07-16 \*\*\*

Sent:

Thursday, November 13, 2008 3:12 PM

To:

Kim, Julie

Cc:

Silverman, Janet

Subject:

Rule 14a-8 Broker Letter (TWX) CUV

Attachments: CCE00005.pdf

Dear Ms. Kim,

Attached is the broker letter requested. Please advise within one business day whether there is any further rule 14a-8 requirement.

Sincerely,

John Chevedden



Date: 13 NOU 2008

As introducing broker for the as account number as custodian, DJF Discount Brokers he Lyneth Stemes is an shares of Timy Warner Inc.  worth of the above mentioned security held at least two thousand dollars worth year prior to the date the proposal was	, held with Nat reby certifies that id has been the ber ; having held s since the followin h of the above me	ional Finar es of the da eficial own t least two g date: 2 ttioned sec	te of this certification are of 4000 thousand dollars	
Sincerely,				¥
Mark Filiberto, President DJF Discount Brokers				•
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ţ	FRE FX: 212-	411-7/14	Fax 6	